

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Shimon Moalem,

Plaintiff

V.

FedEX Ground Package System, Inc.,

Defendant

Case No.: 2:18-cv-01223-JAD-NJK

Order Granting Defendant's Motion to Dismiss with Leave to Amend

[ECF No. 30]

Pro se Plaintiff Shimon Moalem asserts three state-law claims against FedEx Ground Package System: breach of contract, breach of the implied covenant of good faith and fair dealing, and loss of business opportunities.¹ Moalem claims he suffered \$86,000 in damages because FedEx failed to timely deliver goods he shipped to himself for a trade show in New York.² I dismissed Moalem's claims as preempted by the Carmack Amendment to the Interstate Commerce Act³ and granted him leave to amend his complaint if he could plead a Carmack Amendment claim.⁴ Moalem briefly cites the Carmack Amendment in his amended complaint, but he nonetheless just reasserts the same three state-law claims that I expressly dismissed.⁵

¹ ECF No. 25 at 5–7.

² *Id.* at 2–4.

³ 49 U.S.C. § 14706.

⁴ ECF No. 24 at 1–2.

⁵ ECF No. 25 at 5–7.

1 The Carmack Amendment is the exclusive cause of action for interstate-shipping-contract
2 claims⁶ and imposes liability on carriers for loss, damage, or costs associated with late delivery.⁷
3 So, to state a claim under the Carmack Amendment, a plaintiff must allege three elements: (1)
4 delivery of the goods to the carrier in good condition, (2) damage to the property or failure to
5 deliver altogether, and (3) the amount of damages.⁸ Under the second element, damage includes
6 costs resulting from the delayed delivery or storage of goods.⁹ Once a shipper adequately pleads
7 his claim, the burden shifts to the carrier to prove that it was not negligent and the damage arose
8 from an act of God, the public enemy, the shipper's acts, or the inherent nature of the goods.¹⁰

9 Because Moalem has again attempted to plead preempted state-law claims, I dismiss his
10 second amended complaint but grant him one final opportunity to amend. To avoid a final
11 dismissal and closure of this case, Moalem must allege a single claim for a violation of the
12 Carmack Amendment, and he must plead facts that satisfy the elements above.

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18 ⁶ *Hall v. N. Am. Van Lines, Inc.*, 476 F.3d 683, 688 (9th Cir. 2007).

19 ⁷ 49 U.S.C. § 14706(a)(1); *N.Y., Phila. & Norfolk R.R. Co. v. Peninsula Produce Exch. of Md.*,
20 240 U.S. 34, 39 (1916) (holding that the Carmack Amendment applies to all damages resulting
from a carrier's failure to fulfill its duties at any point in the transportation, including delayed
delivery).

21 ⁸ *Missouri Pac. R. Co. v. Elmore & Stahl*, 377 U.S. 134, 138 (1964).

22 ⁹ *N.Y., Phila. & Norfolk R.R. Co.*, 240 U.S. at 39; *see also Am. Synthetic Rubber Corp. v.*
Louisville & Nashville R.R. Co., 422 F.2d 462, 466 (6th Cir. 1970); *Sorensen-Christian Indus.,*
23 *Inc. v. Ry. Exp. Agency, Inc.*, 434 F.2d 867, 869 (4th Cir. 1970).

¹⁰ *Missouri Pac. R. Co.*, 377 U.S. at 138.

Accordingly, IT IS HEREBY ORDERED that FedEx's motion to dismiss [ECF No. 30] is **GRANTED**. Moalem's claims are **dismissed**, and he has until **May 7, 2019**, to file an amended complaint that complies with this order. Failure to timely file an amended complaint will result in closure of this case.

Dated: April 22, 2019.

U.S. District Judge Jennifer A. Dorsey